

FAEGRE BAKER DANIELS

2015 Legislative Update

Indiana Society of Anesthesiologists



February 15, 2015

The General Assembly is heading into the final week of committee activity for bills in their house of origin. Thursday, February 19, is the last day for committee reports to be approved in both the House and Senate. Any bill that hasn't been set for a hearing by now is likely dead for the session, although concepts included in "dead" bills may be revived in other measures at any time between now and the end of April.

House Public Health Committee chairman Rep. Ed Clere confirmed last week that he is not planning schedule a hearing for **House Bill 1310**. The bill would allow a CRNA to administer anesthesia in a hospital under the direction of and in the immediate presence of a podiatrist, provided that a physician is available to respond immediately and in person to a medical emergency. After Rep. Clere communicated his decision to IANA, its lobbyists urged Sen. Pat Miller to grant a hearing to the companion bill in the Senate (**Senate Bill 167**). After discussing the issue with both ISA and ISMA, Sen. Miller reaffirmed her previous decision to let **SB 167** die without a hearing.

During the past week, several bills on the tracking list passed out of committee or received floor action. Highlights include:

- **HB 1401** (Medicaid fraud) passed committee and now moves to the floor. The bill expands the crime of Medicaid fraud to include knowingly or intentionally making, uttering, presenting, or causing to be presented to the Medicaid program a claim that is materially false or misleading.
- **HB 1065** (investigational drugs & devices), **HB 1448** (mental health drugs & coverage), **SB 323** (waste blood specimen requirements) and **SB 406** (overdose intervention drugs) all passed their house of origin and moved to the second chamber.

Looking ahead, medical malpractice and physician immunity will be a focus of discussion at the Statehouse next week. In an effort to pick up enough votes to pass **Senate Bill 55**, Sen. Brent Steele amended the legislation to reinstate language that permits a patient to bypass the medical review board if the claim is in the amount of \$15,000 or less. However, the amendment also allows patients to bypass the medical review board if the claim is based on removal of a wrong body part or the existence of a foreign object in the patient's body.

On the House side, **House Bill 1043** is scheduled for hearing on Monday morning in the House Judiciary Committee. Authored by Rep. Jerry Torr, the proposed legislation increases the medical malpractice cap from \$1,250,000 to \$1,650,000 for claims arising after June 30, 2015, and also increases the maximum amount of liability for a health care provider or a health care provider's insurer from \$250,000 to \$300,000. The Judiciary Committee is also scheduled to hear **House Bill 1145**, authored by Rep. David Frizzell, which would provide immunity in certain circumstances for volunteer health care providers.

Following are summaries of bills of potential interest to ISA that are still alive, along with their current status. As always, please let me know if you have any questions or need additional information.

SCOPE OF PRACTICE

HB1183 PHYSICIAN ASSISTANTS (DAVISSON S)

- Allows a physician assistant who is delegated authority to prescribe a controlled substance after practicing for at least 1,800 hours. (Current law allows a physician assistant to be delegated to prescribe a controlled substance after practicing for one year after graduating from a physician assistant program and practicing for at least 1,800 hours.)
- Removes requirement that supervising physician must delegate prescribing authority by the name of the drug or drug classification.
- Removes the 30 day limitation on the amount of a controlled substance a physician assistant may prescribe.
- Provides that a pharmacist may not require the supervising agreement or a cosignature to fill a prescription written by a physician assistant.
- Removes requirement that patient encounters must be reviewed within 72 hours and provides that a physician must review physician assistant charts within a reasonable time which is appropriate for the maintenance of quality medical care.
- Reduces the number of physician assistant charts that a physician must review.
- Requires 50% of patient records for a Schedule II prescription that a physician assistant, with less than a year of authority to prescribe Schedule II controlled substances, writes must be reviewed by the physician.
- Provides that a physician may supervise four physician assistants at the same time.
- Allows a physician assistant and certain advanced practice nurses to treat a patient with a Schedule III or Schedule IV controlled substance for weight reduction or to control obesity if certain conditions are met.

Current Status: 2/3/2015 - Senator Charbonneau added as third sponsor

All Bill Status: 2/3/2015 - Senator Miller, Pat added as sponsor
2/3/2015 - Senator Grooms added as second sponsor
2/3/2015 - House Bills on Third Reading

State Bill Page: [HB1183](#)

HB1548 MIDWIVES (LEHE D)

- Changes the requirement that a direct entry midwife (midwife) have a collaborative agreement with a physician requiring that the midwife's client have a consulting physician.
- Extends the date: (1) by which a midwife is required to submit certain information to obtain an exemption from certain certification requirements; (2) relating to restrictions of use of the title "certified direct entry midwife"; and (3) after which practicing midwifery without a certificate is a felony.

- Requires certain information to be included in a midwife's disclosure form, client's records, and emergency plan.
- Requires a client's medical records that are prepared by a consulting physician be provided to the midwife.
- Repeals certain provisions concerning physician collaboration.

Current Status: 2/16/2015 - House Public Health, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, House Chamber

State Bill Page: [HB1548](#)

MEDICAL MALPRACTICE

HB1043 MEDICAL MALPRACTICE CAPS (TORR J) Increases the medical malpractice cap from \$1,250,000 to \$1,650,000 for claims arising after June 30, 2015. Increases the maximum amount of liability for a health care provider or a health care provider's insurer from \$250,000 to \$300,000.

Current Status: 2/16/2015 - House Judiciary, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, Rm. 156-D

State Bill Page: [HB1043](#)

HB1145 CIVIL IMMUNITY FOR VOLUNTEER HEALTH CARE PROVIDERS (FRIZZELL D) Specifies criteria for civil immunity from liability for certain volunteer health care providers. Requires the professional licensing agency to establish and maintain: (1) a process for the approval of locations at which volunteer health care services may be provided; and (2) a health care volunteer registry.

Current Status: 2/16/2015 - House Judiciary, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, Rm. 156-D

State Bill Page: [HB1145](#)

SB55 MEDICAL MALPRACTICE ACTIONS (STEELE B) Permits a patient to bring an action against a health care provider without submitting the complaint to the medical review board if: (1) the amount of the claim is not more than \$15,000; (2) the cause of action is based on the removal of the wrong body part; or (3) the cause of action is based on the existence of a foreign object in the patient's body.

Current Status: 2/16/2015 - Senate Bills on Third Reading

All Bill Status: 2/12/2015 - Reread second time: amended, ordered engrossed
2/12/2015 - Second reading amended, ordered engrossed

State Bill Page: [SB55](#)

MISCELLANEOUS MEDICAL

HB1065 USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES

(CULVER W) Provides that a manufacturer of an investigational drug, biological product, or device may make the drug, biological product, or device available to a patient who meets certain requirements. Adds to the requirements concerning experimental or nonconventional medical treatment the authority to allow a patient to receive an experimental or nonconventional medical treatment if a physician determines that the patient: (1) has been diagnosed with a terminal disease or condition; and (2) does not have comparable or satisfactory treatment options. Makes a technical correction.

Current Status: 2/10/2015 - Senator Breaux added as third sponsor

All Bill Status: 2/10/2015 - Senator Charbonneau added as sponsor
2/10/2015 - Senator Miller, Pat added as second sponsor
2/10/2015 - Third reading passed

State Bill Page: [HB1065](#)

HB1184 CONTROLLED SUBSTANCES (DAVISSON S) Authorizes optometrists who meet certain requirements to prescribe Tramadol. Adds Tramadol as a schedule IV controlled substance. Includes hydrocodone combination products as schedule II controlled substances. Removes dihydrocodeinone from the schedule III controlled substance list.

Current Status: 2/10/2015 - Referred to the Senate

All Bill Status: 2/9/2015 - Senator Mrvan added as third sponsor
2/9/2015 - Senator Grooms added as sponsor
2/9/2015 - Senator Becker added as second sponsor
2/9/2015 - Third reading passed

State Bill Page: [HB1184](#)

HB1303 REGISTRY OF CERTIFIED PROFESSIONS (MCMILLIN J) Establishes a procedure for individuals to apply to the professional licensing agency to allow qualified individuals to become state certified and be placed on the electronic registry of professions. Prohibits an individual who is not state certified from using the title "state certified".

Current Status: 2/16/2015 - House Bills on Second Reading

State Bill Page: [HB1303](#)

HB1323 MEDICAL RESIDENCY EDUCATION FUND (BROWN T) Establishes the medical residency education fund for the purpose of expanding medical education in Indiana by funding new residency program slots at licensed hospitals. Specifies uses of money from the fund.

Current Status: 2/12/2015 - House Ways and Means, (Bill Scheduled for Hearing); **Time & Location:** 10:00 AM, Rm. 404

State Bill Page: [HB1323](#)

HB1351 AGENCY RULEMAKING AND POLICYMAKING (WOLKINS D) Provides that an agency's statutory authority to regulate and implement programs does not include rulemaking or

policymaking authority that is not based upon a federal requirement or that exceeds the authority granted to a federal or state agency under federal statutory authority. Provides an exception that rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon: (1) the general authority of an agency, subject to limits in the grant of the authority and upon the subject matter; or (2) the power to adopt emergency rules. Requires the legislative services agency (LSA) to review proposed and adopted agency rules, guidelines, standards or other policies. Provides that it is not the intent of the general assembly to have the findings or opinions of the LSA regarding legislative intent or an agency's legal authority to be: (1) used as evidence in any investigation or proceeding; or (2) imputed to the general assembly. Makes changes to the statute requiring distribution of agency statements.

Current Status: 2/16/2015 - House Bills on Third Reading

State Bill Page: [HB1351](#)

HB1401 MEDICAID FRAUD (WASHBURN T) Expands the crime of Medicaid fraud to include knowingly or intentionally making, uttering, presenting, or causing to be presented to the Medicaid program a Medicaid claim that is materially false or misleading.

Current Status: 2/16/2015 - House Bills on Second Reading

State Bill Page: [HB1401](#)

HB1454 AUTO-INJECTABLE EPINEPHRINE (EBERHART S) Allows a health care provider with prescriptive authority to prescribe auto-injectable epinephrine to a business, association, or governmental entity (entity) or an entity's branch office. Sets requirements for certain individuals employed by an entity to fill, store, and administer auto-injectable epinephrine. Provides civil immunity for: (1) a certain entity's employees in the administration of auto-injectable epinephrine; and (2) health care providers in the prescribing of auto-injectable epinephrine and in the training of employees in the administration of auto-injectable epinephrine.

Current Status: 1/27/2015 - Mishler added as cosponsor

All Bill Status: 1/27/2015 - Senator Yoder added third sponsor
1/27/2015 - Senator Miller, Pat added first sponsor
1/27/2015 - Senator Breaux added second sponsor
1/27/2015 - Third reading passed
1/14/2015 - Authored By Sean Eberhart

State Bill Page: [HB1454](#)

SB47 HEALTH CARE PROFESSIONAL CULTURAL TRAINING (BREAUX J) Requires an individual seeking licensure in a health care profession to complete cultural competency training.

Current Status: 2/11/2015 - Senate Pensions and Labor, (Bill Scheduled for Hearing);
Time & Location: 9:00 AM, Rm. 233

State Bill Page: [SB47](#)

SB123 CENTERS FOR MEDICAL EDUCATION (BECKER V) Revises the law setting forth the locations and names for centers for comprehensive medical education.

Current Status: 1/29/2015 - Third reading passed

State Bill Page: [SB123](#)

SB168 ACCESS TO CONTROLLED SUBSTANCE DATA BASE (MILLER P) Permits physicians who hold a temporary medical license to have access to confidential information in the Indiana scheduled prescription electronic collection and tracking (INSPECT) program.

Current Status: 1/26/2015 - Representatives Kirchhofer and Brown, C. added as cosponsor

All Bill Status: 1/26/2015 - Representative Clere added as sponsor
1/26/2015 - Kirchhofer and Brown, C. added as cosponsor
1/26/2015 - Third reading passed

State Bill Page: [SB168](#)

SB293 MEDICAL PEER REVIEW (MILLER P) Provides for use of a peer review committee by a medical school located in Indiana. Allows sharing of peer review information between a medical school peer review committee and another peer review committee.

Current Status: 1/29/2015 - Third reading passed

State Bill Page: [SB293](#)

SB294 LEGEND DRUG INVESTIGATIONS (MILLER P)

- Provides that certain laws concerning obtaining a legend drug or the validity of a prescription or drug order do not apply to actions of a person, practitioner, or pharmaceutical manufacturer performed in an investigation of a pharmaceutical manufacturer's legend drug that is suspected of being counterfeited, adulterated, or misbranded.
- Prohibits a person from owning or operating a store, facility, or other place of business in Indiana where: (1) prescriptions are accepted to be filled; or (2) prescription drugs or devices are ordered, offered or advertised for sale, or paid for; unless the person has a pharmacy permit.
- Excludes mail order and Internet based pharmacies to the extent that they are allowed to operate under state law.

Current Status: 2/18/2015 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

State Bill Page: [SB294](#)

SB358 MEDICATION THERAPY MANAGEMENT (GROOMS R) Defines "medication therapy management" for the purposes of the regulation of pharmacies and pharmacists. Adds the provision of medication therapy management to the definition of "the practice of pharmacy". Includes advanced practice nurses and physician assistants in the definition of "direct

supervision" for the purposes of consulting with a pharmacist on certain drug regimen protocols.

Current Status: 2/2/2015 - Representatives Clere and Stemler added as cosponsor

All Bill Status: 2/2/2015 - Representative Davisson added as sponsor
2/2/2015 - Third reading passed

State Bill Page: [SB358](#)

SB406 OVERDOSE INTERVENTION DRUGS (MERRITT J) Allows specified health care professionals with prescriptive authority to dispense or write a prescription for an overdose intervention drug without examining the individual to whom it may be administered if specified conditions are met. Allows for an individual who is a person at risk, a family member, friend, or other individual in a position to assist another individual who, there is reason to believe, is at risk of experiencing an opioid-related overdose, to obtain and administer an overdose intervention drug if certain conditions are met. Requires a pharmacy that fills a prescription for an overdose intervention drug to report certain information to the INSPECT program. Includes naloxone to be reported to the INSPECT program. Requires certain ambulances and emergency medical services vehicles to be equipped with an overdose intervention drug. Provides for civil and criminal immunity.

Current Status: 2/10/2015 - Senator Randolph added as coauthor

All Bill Status: 2/10/2015 - Representative Ziemke added as cosponsor
2/10/2015 - Representative McMillin added as sponsor
2/10/2015 - Third reading passed

State Bill Page: [SB406](#)

SB439 CONTROLLED SUBSTANCES (HERSHMAN B) Limits Medicaid reimbursement for Subutex and Suboxone or an similar trade name or generic of the drug when the drug was prescribed for the treatment of pain management to only if the drug was prescribed by a physician who meets certain requirements. Allows for the office of Medicaid policy and planning to require prior authorization for these drugs when being prescribed for substance abuse treatment as determined by the board or when being prescribed for more than six months. Requires the division of mental health and addiction to adopt rules concerning: (1) opioid treatment by an opioid treatment provider; (2) take home opioid treatment medications; (3) clinical standards for tapering of a patient, relapse, and overdose prevention; and (4) specified standards and protocols for an opioid treatment provider. Requires an opioid treatment provider to periodically and randomly test a patient for specified drugs during treatment.

Current Status: 2/16/2015 - Senate Bills on Third Reading

State Bill Page: [SB439](#)

SB462 ADVERTISING BY HEALTH CARE PRACTITIONERS (MILLER P) Specifies certain information to be included beginning January 1, 2016, in health care advertisements by a health care practitioner. Sets forth requirements that must be met in order for a physician to use the term "board certified".

Current Status: 2/2/2015 - Representatives Davisson, Kirchhofer and Brown, C. added as

cosponsor

All Bill Status: 2/2/2015 - Representative Zent added as sponsor
2/2/2015 - Third reading passed

State Bill Page: [SB462](#)

SB496 PRIMARY CARE PHYSICIAN LOAN FORGIVENESS PROGRAM (BREAUX J) Provides that a primary care physician who is eligible for student loan forgiveness under the primary care physician loan forgiveness program may have student loans forgiven up to an amount of \$25,000 each year the primary care physician's practice provides service primarily in a rural area.

Current Status: 2/12/2015 - Senator Miller, Pat added as second author

All Bill Status: 2/12/2015 - Committee Report do pass adopted; reassigned to committee on Appropriations

State Bill Page: [SB496](#)

SB534 RULES FOR PRESCRIBING CONTROLLED SUBSTANCES (GROOMS R) Requires, before March 1, 2016, the following boards to adopt rules concerning the prescribing of opioid controlled substances for pain management treatment: (1) the medical licensing board, concerning physician assistants; (2) the board of podiatric medicine, concerning podiatrists; (3) the state board of dentistry, concerning dentists; and (4) the Indiana state board of nursing, concerning advanced practice nurses. Requires each board to report before December 31, 2015, to the legislative council with a status report on the board's efforts to adopt the required rules.

Current Status: 2/16/2015 - Senate Bills on Second Reading

State Bill Page: [SB534](#)

SB543 OFFICE OF HEALTH INFORMATION TECHNOLOGY (BREAUX J) Creates the office of health information technology within the state department of health to: (1) study and report on certain uses of health information; (2) study and report on incentives for use of electronic health records; and (3) implement, and report on implementation of, certain recommendations for further study and legislation concerning health information technology.

Current Status: 2/16/2015 - Senate Family & Children Services, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, Senate Chamber

State Bill Page: [SB543](#)

HB1472 VARIOUS TAX MATTERS (NEGELE S) Among other things: Amends the sales tax exemption for medical equipment, supplies, and devices to: (1) restate the application of the sales tax exemption for medical equipment, supplies, and devices; and (2) provide a sales tax exemption for food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist. Amends the sales tax exemption for drugs, insulin, oxygen, blood, or blood plasma to restate the application of the sales tax exemption. Repeals the sales tax exemption for food and food ingredients prescribed as medically necessary by a physician.

Amends the definition of "research and development activities" for purposes of the sales tax exemption for research and development equipment and property.

Current Status: 2/16/2015 - House Ways and Means, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 404

State Bill Page: [HB1472](#)

SB438 STATE AND LOCAL TAX ISSUES (HERSHMAN B) Among other things: Amends the sales tax exemption for medical equipment, supplies, and devices to: (1) restate the application of the sales tax exemption for medical equipment, supplies, and devices; and (2) provide a sales tax exemption for food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist. Amends the sales tax exemption for drugs, insulin, oxygen, blood, or blood plasma to restate the application of the sales tax exemption. Repeals the sales tax exemption for food and food ingredients prescribed as medically necessary by a physician. Amends the definition of "research and development activities" for purposes of the sales tax exemption for research and development equipment and property.

Current Status: 2/16/2015 - Senate Bills on Second Reading

State Bill Page: [SB438](#)